

Case Summary

Appellant-Defendant Antoin L. Johnson (“Johnson”) appeals his convictions for Criminal Deviate Conduct, a Class B felony,¹ and Criminal Confinement, a Class D felony.² We affirm.

Issue

Johnson presents a single issue for review: whether the State failed to present sufficient evidence of probative value to support his convictions, because the testimony of the victim was incredibly dubious.

Facts and Procedural History

Johnson and Renee Sordelet (“Sordelet”) had been romantically involved and had a child together. On June 8, 2006, Johnson, Sordelet, and their infant daughter returned to Sordelet’s Fort Wayne apartment after Sordelet taught a gymnastics class. Johnson was angry because Sordelet’s income tax refund check had not arrived as anticipated. Also, Johnson had checked Sordelet’s cell phone while she taught the gymnastics class and had discovered a man’s telephone number.

Shortly after entering the apartment, Johnson began to strike Sordelet in the head with a large telephone book, causing her nose to bleed. He ordered Sordelet to go upstairs and she complied. Johnson announced, “you want to be a whore, [I’ll] treat you like one.” (Tr. 54.) He ripped off Sordelet’s clothing and forced a candle into her vagina.

¹ Ind. Code § 35-42-4-2.

² Ind. Code § 35-42-3-3. Johnson does not challenge his conviction of Domestic Battery, a Class A misdemeanor, Ind. Code § 35-42-2-1.3.

Johnson told Sordelet that she could not leave the apartment for a few days so that no one would see her swollen face, and threatened to break her neck if she summoned police. Johnson would not allow Sordelet to put any clothing on. She and her baby slept on a bed overnight while Johnson sat in a chair near the bedroom door, positioned so that he could see Sordelet if she tried to escape.

In the morning, Sordelet got permission from Johnson to go downstairs to get ice packs. She escaped naked out the front door and, using a car key that she had hidden earlier, drove to a nearby telephone and called 9-1-1. Johnson arrived shortly thereafter and disconnected the call. After Sordelet blew her car horn to attract attention, Johnson left and Sordelet was able to place another 9-1-1 call.

On June 15, 2006, the State charged Johnson with two counts of Criminal Deviate Conduct, one count of Criminal Confinement, one count of Domestic Battery, one count of Interference with the Reporting of a Crime³ and one count of Criminal Trespass.⁴ He was tried before a jury on August 15, 2006, and convicted of one count of Criminal Deviate Conduct, Criminal Confinement and Domestic Battery. He was acquitted of the remaining charges. On September 11, 2006, Johnson was sentenced to fifteen years imprisonment (with three years suspended) for Criminal Deviate Conduct, two years for Criminal Confinement and one year for Domestic Battery, to be served concurrently. He now appeals.

³ Ind. Code § 35-45-2-5.

⁴ Ind. Code § 35-43-2-2.

Discussion and Decision

Johnson claims that the State failed to present sufficient evidence to support his convictions of Criminal Deviate Conduct and Criminal Confinement. More specifically, he argues that Sordelet's testimony concerning the act of Criminal Deviate Conduct was incredibly dubious and that she did not testify to any force used against her to support the Criminal Confinement conviction.

To convict Johnson of Criminal Deviate Conduct as charged, the State was required to prove that he knowingly or intentionally caused Sordelet to perform or submit to deviate sexual conduct when Sordelet was compelled by force or imminent threat of force. Ind. Code § 35-42-4-2. Indiana Code Section 35-41-1-9 defines deviate sexual conduct as "an act involving: (1) a sex organ of one person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object."

To convict Johnson of Criminal Confinement as charged, the State was required to prove that he knowingly or intentionally confined Sordelet without her consent. Ind. Code § 35-42-3-3. A person "confines" another when they substantially interfere with that person's liberty. Ind. Code § 35-42-3-1.

When reviewing a claim of insufficiency of the evidence, we consider only the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. Dillard v. State, 755 N.E.2d 1085, 1089 (Ind. 2001). We do not reweigh evidence or assess witness credibility. Id. The conviction will be affirmed unless we

conclude that no reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000), trans. denied.

Sordelet testified that Johnson struck her repeatedly, ripped off her clothing, and forced a candle into her vagina. He demanded that she not leave her apartment and refused to allow her to put any clothing back on. He threatened to put their infant daughter in a closet and break Sordelet's neck if she failed to comply with his orders. Johnson also spent all night sitting in a chair at the door of Sordelet's bedroom to guard against her escape. When she finally ran out, Johnson pursued her. There is sufficient evidence to establish that Johnson knowingly or intentionally, by force or imminent threat of force, caused Sordelet to submit to criminal deviate conduct. There is also sufficient evidence to establish that Johnson knowingly or intentionally confined Sordelet without her consent.

Nevertheless, Johnson argues that Sordelet's testimony must be disregarded entirely because it is incredibly dubious. In rare cases, the "incredible dubiousity rule" will permit an appellate tribunal to impinge upon the jury's responsibility to judge the credibility of witnesses. Berry v. State, 703 N.E.2d 154, 160 (Ind. 1998). Application of the rule is limited to cases where a sole witness provides inherently contradictory testimony that is equivocal or coerced, and no circumstantial evidence supports the defendant's guilt. Id.

However, we are not confronted with a situation in which a single witness provided inherently contradictory and uncorroborated testimony. Sordelet's testimony was corroborated by physical evidence. Her DNA was present on the label end of a candle recovered by Fort Wayne police officers from her apartment. The officers also recovered

torn clothing from the apartment. The nurse who conducted a sexual assault examination of Sordelet reported finding an “injury to the internal female sex organ” and opined that the injury was “consistent with blunt force penetration of the female sex organ.” (Tr. 201-02.)

Furthermore, Sordelet’s trial testimony was not inconsistent. Johnson contends that Sordelet’s testimony lacked credibility because she previously sent him a letter declaring her intention to testify that the battery happened but criminal deviate conduct did not. However, we observe that the incredible dubiousity rule may have application only when the factfinder is presented with equivocal testimony. See Love v. State, 761 N.E.2d 806, 810 (Ind. 2002) (holding that the victim’s testimony was not incredibly dubious or coerced although she initially denied, in out-of-court conversation with her mother, that the defendant had molested her).

Accordingly, Johnson presents no basis for applying the incredible dubiousity rule so as to discard Sordelet’s testimony. The State presented sufficient evidence from which the jury could conclude that Johnson committed Criminal Deviate Conduct and Criminal Confinement.

Affirmed.

SHARPNACK, J., and MAY, J., concur.